



February 16, 2000

Mr. Clay T. Grover
Feldman & Rogers, L.L.P.
Coastal Banc Plaza
5718 Westheimer, Suite 1200
Houston, Texas 77057

OR2000-0560

Dear Mr. Grover:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 132353.

The Longview Independent School District ("LISD" or the "district"), which you represent, received a request for the cellular telephone numbers of certain district employees and of all LISD board members. You state that you have released all responsive information that relates to the identified LISD employees. You claim, however, that the remaining information, the cellular telephone numbers of the school board members, is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the act. Therefore, we will first consider your section 552.101 and section 552.102 claims together.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses the common law right to privacy and excepts from disclosure private facts about an individual. *See id.* Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). As a general rule, the home addresses and home telephone numbers of public employees are not considered to be highly intimate and embarrassing. Open Records Decision No. 530 (1989). Similarly, we do not believe an individual’s private cellular telephone number is highly intimate and embarrassing. Thus, the information requested is not excepted from public disclosure under either sections 552.101 or 552.102.

Section 552.024 provides that a public employee or official can opt to keep private his or her home address, home telephone number, social security number, or information that reveals that the individual has family members. Section 552.117 provides in part:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

(1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024.

You state that the board members, rather than the district, pay for the cellular telephones and that these telephone numbers should be protected from disclosure. This office has stated:

“The purpose of [sections 552.024 and 552.117] is to protect public officials and employees from being harassed while at home. Arguably, similar considerations apply to cellular mobile phones installed by the county in public officials’ and employees private vehicles.”

Open Records Decision No. 506 at 5 (1988). Therefore, you must withhold the cellular telephone numbers of board members who, as of the time of the request for the information, had made a signed, written election to keep this information private, as provided in section 552.024. Open Records Decision Nos. 530 at 5 (1989), 482 at 4 (1987), 455 (1987). The cellular telephone numbers of board members who did not make such an election must be disclosed. Please note that whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989).

In summary, section 552.117 protects the cellular telephone numbers of government officials and employees who pay directly for all costs related to the cellular phone and who elect to keep their home telephone number private under sections 552.024 and 552.117. This election must be made *prior* to the request for information. As you inform us that the government officials whose information is at issue here did not elect to keep this information confidential under section 552.024 prior to the request, the information responsive to this request may not be withheld from public disclosure based on section 552.117.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

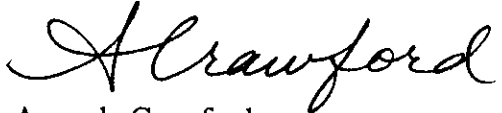
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "A Crawford". The signature is fluid and elegant, with the first letter 'A' being particularly large and stylized.

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/nc

Ref: ID# 132353

Encl. Submitted documents

cc: Ms. Becky Bell
Longview News-Journal Staff Writer
P.O. Box 1792
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(w/o enclosures)